A.F.R.

(96)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO. 1547 OF 2002

PETITIONERS

1. M/s Ashirvad Ispat Udyog
   Urla Industrial Complex
   Urla, Dist. Raipur (C.G.)
   Through its Proprietor
   Vijay Chand Bothra
   S/o Shri Sampat Lal Bothra
   Aged about 49 years
2. Vijay Chand Bothra
   Urla Industrial Complex
   Urla, Dist. Raipur (C.G.)
   S/o Shri Sampat Lal Bothra
   Aged about 49 years
3. Basant Shrivastava
   Urla Industrial Complex
   Urla, Dist. Raipur (C.G.)
   S/o Late Suraj Prasad Shrivastava
   Aged about 34 years
4. Ashirvad Iapat (Ryp) Pvt. Ltd.
   Urla Industrial Complex
   Urla, Dist. Raipur (C.G.)
   Through its Director
   Vijay Chand Bothra
   S/o Shri Sampat Lal Bothra
   Aged about 49 years

versus

RESPONDENTS

1. Customs Excise & Gold Control
   Appellate Tribunal
   West Block No. 2, R.K. Puram,
   New Delhi – 110066
2. Commissioner
   Central Excise & Customs,
   Central Revenue Building,
   Civil Lines, Raipur (C.G.)

WRIT PETITION NO. 1520 OF 2002

PETITIONERS

1. M/s Ashirvad Ispat (RYP) (P) Ltd.
   Urla Industrial Complex
   Urla, Dist. Raipur (C.G.)
   Through its Director
   Vijay Chand Bothra
   S/o Shri Sampat Lal Bothra
   Aged about 49 years

(97)

2. Vijay Chand Bothra
Urla Industrial Complex
Urla, Dist. Raipur (C.G.)
S/o Shri Sampat Lal Bothra
Aged about 49 years

3. Basant Shrivastava
Urla Industrial Complex
Urla, Dist. Raipur (C.G.)
S/o Late Suraj Prasad Shrivastava
Aged about 34 years

4. Jitendra Kumar Bothra
Urla Industrial Complex
Urla, Dist. Raipur (C.G.)
S/o Vijay Chand Bothra
Aged about 28 years

versus

RESPONDENTS

1. Customs Excise & Gold Control
Appellate Tribunal
West Block No. 2, R.K. Puram,
New Delhi – 110066

2. Commissioner
Central Excise & Customs,
Central Revenue Building,
Civil Lines, Raipur (C.G.)

Present : Mr. P. Diwakar, learned Senior Advocate with Miss Sunita Jain, learned counsel for the petitioners.
Mr.V.S. Tiwari, learned counsel on behalf of Mr. Bhishma Kinger, learned counsel for the respondents No. 1 and 2.

ORAL ORDER
(Passed on 27th January, 2006)

In these writ petitions, the question that arises for decision-making is substantially similar and, therefore, the writ petitions could be heard and disposed of together for the sake of convenience. The facts are also substantially similar.

(2) The facts, in brief, in both the writ petitions are as follows:

The Commissioner, Central Excise & Customs, Raipur, the 2nd respondent herein, on the basis of the report submitted by the Central Excise Officers

passed the order on 15-11-2001/13-12-2001assessing excise duty payable by the petitioners. The petitioners being aggrieved by the above order of the Commissioner, the second respondent herein, preferred appeal to the Customs Excise & Gold Control Appellate Tribunal under Section 35 of the Central Excise Act (for short "the Act") without depositing the duty demanded in terms of Section 35-F of the Act. However, the petitioners moved applications for exempting them from depositing the duty demanded. The applications were opposed by the Department. The Appellate Tribunal by its order dated 31-05-2002 partly allowed the applications of the petitioners and they were directed to deposit a sum of Rs. 6.75 Lacs, in case of the petitioner in W.P.No. 1547 of 2002 and a sum of Rs. 5.25 Lacs in case of the petitioner in W.P.No. 1520 of 2002. The petitioner being aggrieved by the above order of the Appellate Tribunal have preferred W.P. Nos. 1547 of 2002 and 1520 of 2002. This Court has not passed any interim order so far.

(3) When the matter stood thus, the Appellate Tribunal by its order dated 07-08-2002 (Annexure P/11) dismissed the appeals preferred by the petitioners on the ground that the direction issued to them to deposit a sum of Rs. 6.75 Lacs, in case of the petitioner in W.P.No. 1547 of 2002 and a sum of Rs. 5.25 Lacs in case of the petitioner in W.P.No. 1520 of 2002., has not been complied with and therefore the appeals are not maintainable. In that view of the matter, the petitioner in W.P. No. 1547 of 2002 has made I.A. No. 6318 of 2002 for amending the writ petition for quashing of the order dated 07-08-2002. Similarly, the petitioner in W.P. No. 1520 of 2002 has also made I.A. No. 6316 of 2002 for amendment of the writ petition for quashing of the order dated 07-08-

2002. That application was allowed by this Court on 16-04-2003. The application I.A. No. 6318 of 2002 filed in W.P. No. 1547 of 2002 is allowed by me by a separate order.

(4) I heard learned counsel for the parties and perused the order impugned in the writ petitions and other material papers appended to the writ petitions. Shri P. Diwakar, learned Sr. Counsel for the petitioner would strenuously contend that the order of the 2nd respondent is *ex facie* illegal and could not be sustained if not for any reason but for the reason that the non-relied documents were not returned to the petitioners notwithstanding the request made by the petitioners to return them and therefore the petitioners were handicapped to put forth their defence effectively before the 2nd respondent. He would also highlight that if the Court refuses the reliefs, it would result in great hardship and prejudice to the petitioners and, therefore, the intervention of the Court, in the facts and circumstances of the case, is very much warranted. Learned counsel for the department, *per contra*, would support the impugned orders made by the 2nd respondent and the 1st respondent Tribunal.

(5) If the provisions of sub Section 1 of Section 35 E and the provisions of Section 35 F read together, it would make it apparently clear that the deposit of the duty demanded or the penalty levied is a must in order to maintain an appeal under Section 35 E of the Act, unless the Commissioner of Appeals or Appellate Tribunal, as the case may be, in their discretion, dispenses with such deposit. In this case, the petitioners rightly moved applications before the Appellate Tribunal for exempting them from depositing the duty demanded. The Appellate Tribunal having

considered the claims and counter claims of the petitioners and the Department, in its discretion, partly allowed the applications of the petitioners and directed them to deposit a part of the duty demanded within a stipulated time, but, admittedly the petitioners did not comply with that direction. In other wards, the petitioners have failed to deposit even a part of the duty demanded. The resultant position is that, in law, they could not maintain the appeal provided under Section 35 E of the Act. It also needs to be noticed that even this Court did not stay operation of the order made by the Tribunal. Simply because, the petitioners have chosen to file writ petitions under Article 226 of the Constitution of India and they have been lying all these months and years in this Court without their being any order whatsoever, that circumstance itself would not be a justification for the petitioners not to comply with the orders made by the Appellate Tribunal on their own applications.

(6) Although it was contended by Shri P. Diwakar, learned Sr. Counsel that non-returning of non-relied documents was illegal, that circumstance would not be a justification for this Court, particularly, at this distance of time to step-in under Article 226 of the Constitution and direct the Appellate Authority to hear the appeals on merit after exempting the petitioners totally from deposit of duty demanded. An enactment incorporated by the law-maker to safeguard the public interest could not be rendered otiose by this Court by granting exemption from the deposit of the duty demanded unless there are weighty and substantive grounds to do so. Furthermore, it needs to be noticed that simply because in the order made by the 2nd respondent certain error or flaw, legal or factual, has gone in to the decision-making, that circumstance itself without

anything further to show the inability of the petitioner to make the deposit, would not be a justification for this Court to accede to the request of the learned counsel for the petitioners. In the circumstance, I do not find any good ground to grant the relief to the petitioners. The writ petitions are devoid of merit and they are accordingly dismissed. No costs.

Sd/-
Chief Justice

Brajesh